

Untitled

August 18, 2000

D. T. E. 99-AD-3

Adjudicatory hearing in the matter of the complaint of George Fichera, relative to the rates and charges for gas sold by Colonial Gas Company.

APPEARANCES: George Fichera

33 Baldwin Road

Billerica, MA 01821

PRO SE

Complainant

Daniel J. Wilkins, Esq.

Colonial Gas Company

40 Market Street

P.O. Box 3064

Lowell, MA 01852-3064

FOR: COLONIAL GAS COMPANY

Respondent

Untitled

I. INTRODUCTION

On August 11, 1998, an informal hearing was held before the Consumer Division of the Department of Telecommunications and Energy ("Department") on the complaint of George Fichera ("Complainant") relative to rates and charges for natural gas sold by the Colonial Gas Company ("Company" or "Respondent") as a result of an allegedly defective meter. The Complainant was dissatisfied with the informal hearing decision and requested an adjudicatory hearing before the Department pursuant to 220 C.M.R. § 25.02(4)(c). The matter was docketed as D.T.E. 99-AD-3.

Pursuant to notice duly issued, an adjudicatory hearing was held on July 15, 1999 at the Department's offices in Boston, in conformance with the Department's Regulations on Billing and Termination Procedures, 220 C.M.R. §§ 25.00 et. seq. The Complainant testified on his own behalf. The Respondent sponsored the testimony of Thomas W. Dedrick, manager of customer service and credit for the Company. The evidentiary record consists of thirteen exhibits and one record request response.

II. SUMMARY OF THE ISSUES

The Complainant contends that the gas meter at his single-family residence was defective and registered incorrect readings showing gas consumption in his residence to be higher than the amount actually consumed (Tr. at 5-8). The Complainant requested removal and state testing of his meter and disputes the method and result of the meter test as well as bills issued by the Company during the period of operation of the alleged defective meter (id.). The Complainant further disputes three alleged bills containing contradicting amounts which were issued by the Company during March 1999 (Exhs. F-1 through F-3; Tr. at 11, 14).

The Company contends that the meter was state-tested according to the laws and regulations of the Department and found to be accurate (Tr. at 8). The Company asserts that the Complainant is responsible for payment of outstanding bills of \$1,306.58 through

July 13, 1999, which include the \$917.75 as specified in the informal decision (Exh. C-2; Tr. at 8-11).

III. SUMMARY OF FACTS

A. The Complainant

The Complainant testified that he resides at 33 Baldwin Road, Billerica, Massachusetts (Tr. at 5). The Complainant stated that he converted his home from oil to gas service in 1996 (id. at 11). The Complainant also stated that he used the gas service only for heat and hot water (id. at 19). The Complainant stated that during the summer of 1998 he constructed a large second-floor addition that doubled the size of his residence upon its completion in September 1998 (id. at 10, 13-14, 20-21). In response to Department questioning of the Complainant regarding whether there was any increase in "R" or insulation value as a result of construction, the Complainant stated that the new top floor addition was insulated (id. at 21). The Complainant also stated that in 1996, he installed a wood stove that was used from morning to night during the period up to construction of his addition and during which times gas was not used for heat (id.).

The Complainant stated that his gas meter was removed at his request and tested by the Company on April 11, 1998 (id. at 6-7, 19). The Complainant contended that he compared his residential gas bills for the period from 1997 through September 1998 ("pre-construction period") with the bills for corresponding months after September 1998 ("post-construction period") and noted that the bills for gas consumption were approximately the same (id. at 10, 12-14, 17-18). In support of his contention, the Complainant pointed to the following examples in his gas usage history:

Date CCF(1) Average Temperature(2) (degrees Fahrenheit)

10/97 64 51

10/98 82 61

11/97 148 28

11/98 197 41

12/97 206 32

12/98 253 37

(Exhs. F-2, C-3; Tr. at 12-14).

The Complainant argues that the comparable bills for his gas consumption for the pre-construction period should have been lower than the corresponding post-construction period based upon the increased size of the residence (Tr. at 12-14). However, the Complainant contends that since the bills and consumption are basically the same, the tested meter must be defective, gas usage readings attributable to the first meter are too high and the Company billings based upon those readings reflect amounts for which he should not be responsible (id. at 6-8, 12-13, 18-19). The Complainant acknowledged that only the \$917.75 amount for gas usage during the pre-construction period is in dispute (id. at 10-12). The Complainant further acknowledged that readings subsequent to changing the meter were accurate (id. at 19-20).

The Complainant also stated that the gas meter was removed and tested by the Company and not by an independent state test as he had requested (id. at 6-7, 18-19, 34-37, 45-46). The Complainant asserted that the Company "could have just did a little adjustment, made the meter 100 percent or make it run slow" (id. at 18-19). The Complainant also asserted that the Company records failed to record the correct dates for the test since they indicate that the meter was removed on April 11, 1998 and tested on April 10, 1998 (id. at 36-37).

The Complainant also testified that the Company sent him three bills in one month, dated March 15, 1999, March 17, 1999 and March 30, 1999, reciting amounts due of \$1,686.12, \$2,460.23 and \$1,181.05, respectively, which the Complainant stated left him confused as to what the appropriate amount billed by the Company was supposed to be (Exhs. F-1 through F-3; Tr. at 14-17, 37).

B. The Company

The Company stated that meter number 97466 was installed at the Complainant's residence on November 20, 1996 (Exh. C-1; Tr. at 25). The Company further stated that the Complainant's meter was removed and state-tested according to the laws and regulations of the Department on April 10, 1998 and determined to be 100-percent accurate as required by

G.L. c. 164, § 103 (Exhs. C-6, C-7, C-9; Tr. at 8, 31-36). (3)

The Company stated that the Complainant's usage of gas was consistent throughout the pre-construction period but increased dramatically in the 1999 post-construction period

(Tr. at 27-28). The Company submitted a monthly summary of the Complainant's gas

Untitled

consumption containing the following figures to support its contention:

Billing Month 1996 CCF 1997 CCF 1998 CCF 1999 CCF

January 240 226 541

February 309 262 404

March 213 190 353

April 202 174 207

May 36 70 145

June 153 40 46

July 20 32

August 16 16

September 27 19

October 64 82

November 148 197

December 178 206 253

(Exh. C-2).

The Company asserted that this case is a billing dispute that arises from the Complainant's "impression of use" (Tr. at 8). The Company argues that *Bardwell v. Essex County Gas*, D.T.E. 98-AD-6 (1998), supports the premise that actual readings from a meter tested and found to be accurate outweigh a customer's impression of use and are presumed correct absent clear and convincing evidence to the contrary (id. at 32-33). The Company also argues that the Complainant owes and should be ordered to pay outstanding bills in the amount of \$1,306.58, including reconnecting charges and payments to-date (Exh. C-2; Tr. at 9, 26-27).

The Company also explained that it sent the Complainant three documents in

March 1999 as follows: (1) a Company Notice of Termination dated March 15, 1999 indicating a collection amount in the sum of \$1,686.12 representing the February 16, 1999 Company bill of \$2,348.80, less current charges of \$412.68 and less a February 22, 1999 payment of \$250 by the Complainant (Exh. F-3); (2) a Company Monthly Billing Statement dated March 17, 1999 indicating a balance owing in the amount of \$2,460.23 representing an outstanding balance of \$2,098.80 plus current charges of \$361.43 (Exh. F-2); and (3) a Company Termination Statement dated March 30, 1999 indicating a collection amount in the sum of \$1,181.05 representing the outstanding balance above (\$2,460.23), less current charges above (\$361.43) and less the disputed bill under appeal of the informal hearing decision (\$917.75) (Exh. F-1) (Tr. 39-41; RR-C-1).

IV. STANDARD OF REVIEW

Actual readings from a meter tested and found to be accurate outweigh a customer's impression of use. *Bardwell v. Essex County Gas Company*, D.T.E. 98-AD-6 (1998); *Babine v. Massachusetts Electric Company*, D.P.U. 92-AD-35 (1994); *Crossley v. Boston Gas Company*, D.P.U. 576 (1983). Where a meter has been tested and found accurate, past actual readings are correct absent clear and convincing evidence to the

Untitled

contrary. *Chapman v. Eastern Edison Company*, D.P.U. 262 (1981); see also *Downey v. Boston Gas Company*, D.P.U. 109 (1980). In addition, the Department repeatedly has found that a mere discrepancy in use is insufficient to rebut the accuracy of a meter test. *Roberto v. Commonwealth Electric Company*, D.P.U. 91-AD-10 (1992); *Barach v. Boston Edison Company*, D.P.U. 91-AD-6 (1992); *Nelder v. Boston Edison Company*, D.P.U. 91-AD-38 (1994); *Brabazon v. Boston Gas Company*, D.P.U. 85-AD-32 (1987). The customer must meet a strict standard when faced with a meter tested and found accurate. The standard rests upon two basic premises: (1) scientific evidence supports the certainty and reliability of tested meters; and (2) billing for utility consumption could not feasibly be based upon a customer's impression of his or her consumption. *Mellen v. Boston Gas Company*, D.P.U. 91-AD-8 (1994). *Donovan v. Hingham Water Company*, D.P.U. 758-B (1986); *Pisacane v. Commonwealth Electric Company*, D.P.U. 1437 (1984).

ANALYSIS AND FINDINGS

The Department finds that the Company tested the Complainant's meter after it was removed from the Complainant's residence (Exhs. C-6, C-7; Tr. at 8, 31-36). The Department further finds that the Company's test of the Complainant's gas meter indicates that the meter was operating properly and was within the allowable range and accuracy level of not more than two percent as set forth by G.L. c. 164, § 103. As previously noted by both the Complainant and the Department, there appears to be a discrepancy between Company Exhibits C-6 and C-7 pertaining to whether the meter was tested on April 10, 1998 or April 11, 1998. However, the Department also notes that an examination of its own records of this proceeding reveals that a letter dated May 28, 1998 was sent from Robert F. Smallcomb, Director of the Department's Pipeline and Safety Division, to the Complainant stating that the Complainant's meter, D790653, was tested by the Department on May 26, 1998 and found to be 100 percent accurate and within the legal limits of two percent slow and two percent fast in accordance with G.L. c. 164, § 103. (4) Accordingly, the Department finds that the meter was tested by both the Company and a state test and found to be 100 percent accurate (Exhs. C-7, DTE-1). The Department further finds that the noted discrepancy in dates does not impugn the accuracy of the test results and is an unintended or harmless error.

The Department has previously found that a customer must meet a strict standard when faced with a meter tested and found accurate. The standard rests upon two basic premises: (1) scientific evidence supports the certainty and reliability of tested meters; and (2) billing for utility consumption could not feasibly be based upon a customer's impression of his or her consumption. *Mellen v. Boston Gas Company*, D.P.U. 91-AD-8 (1994). *Donovan v. Hingham Water Company*, D.P.U. 758-B (1986); *Pisacane v. Commonwealth Electric Company*, D.P.U. 1437 (1984). In applying the first part of the standard to the facts of this case, the Department finds that the scientific evidence of the tests performed by the Company and the Department are dispositive of the Complainant's arguments that he received incorrect billings as a result of a defective meter. Moreover, while the Complainant suggests in his testimony the possibility that the Company might have adjusted the meter at the time of testing, the Department finds no credible evidence in the record to support that argument. In applying the second part of the standard to the Complainant's argument that records showing comparable gas usage at his residence between the pre-construction and post-construction periods are similar but would not have been but for a defective meter, the Department finds that such argument is based upon the Complainant's impression of how much gas he should have consumed. In this case, the Complainant's arguments are flawed and not supported by either the Complainant's testimony or the evidence of gas usage history for the Complainant's account submitted by the Company. On the contrary, the record supports the Company's assertion that gas consumption by the Complainant during the post-construction period did increase substantially (Exh. C-2; Tr. at 27-28). The comparative gas consumption increases for the Complainant's account between the pre-construction and post-construction heating seasons are particularly noticeable where evidenced by increases from 64 CCF to 82 CCF in October, 148 CCF to 197 CCF in November, 206 CCF to 253 CCF in December, 226 CCF to 541 CCF in January, 262 CCF to 404 CCF in February, 190 CCF to 353 CCF in March and 174 CCF to 207 CCF in April (*id.*).

Untitled

The Department has previously held that actual readings from a meter tested and found to be accurate outweigh a customer's impression of use. *Bardwell v. Essex County Gas Company*, D.T.E. 98-AD-6; *Babine v. Massachusetts Electric Company*, D.P.U. 92-AD-35 (1994); *Crossley v. Boston Gas Company*, D.P.U. 576 (1983). The Department has also previously held that where a meter has been tested and found accurate, past actual readings are correct absent clear and convincing evidence to the contrary. *Chapman v. Eastern Edison Company*, D.P.U. 262 (1981); see also *Downey v. Boston Gas Company*, D.P.U. 109 (1980). The Department has previously determined that the Complainant's argument is predicated solely on his impression that his patterns of historical consumption of gas between the pre-construction and post-construction periods should have been substantially different. Such an argument does not demonstrate that the meter was defective nor does it satisfy the Complainant's burden of demonstrating by clear and convincing evidence that the actual meter readings tendered by the Company for the periods in question are incorrect.

The Department also finds that testimony by the Complainant about his use of a wood burning stove for all daytime heating needs during the pre-construction period tends to further reduce the validity of the Complainant's arguments about similar gas usage at his residence during the pre-construction and post-construction periods (Tr. at 21). The Department finds that the Complainant's use of this second supplemental heat source during the pre-construction and not the post-construction periods only skews a meaningful comparison of historical gas consumption. The Department also notes that other factors, such as the possibility of improved R-value of insulation in constructing the Complainant's addition, could also affect the validity of the Complainant's attempted comparisons of gas usage (*id.*). (5) The Department finds, however, that such testimony is speculative and does not constitute credible evidence.

Finally, although the two March 1999 termination notices and same-month billing statement introduced into evidence by the Complainant do appear to contain conflicting billing amounts on their face, the Department is satisfied with the reconciliation proffered by the Company in its July 20, 1999 record request response and finds no residual disagreement or inconsistency between those documents and the stipulation of the \$917.75 amount in dispute between the parties (Tr. at 10-11; RR-C-1). Moreover, the Complainant conceded that he does not dispute any readings subsequent to the meter change on April 10, 1998 (Tr. at 19-20).

In summary, the Department determines that none of the arguments or evidence submitted by the Complainant meet the burden of showing that the meter which was removed and twice independently tested, first by Company and then by the state, each time in accordance with state procedures, was defective. Viewing the record evidence as a whole, the Department concludes that the Complainant's testimony is insufficient to rebut the accuracy of both the Company billings and the meter from which those readings were taken. Accordingly, the Department determines and orders that the updated balance of \$1,306.58, which includes the disputed amount from the informal hearing of \$917.75 on the Complainant's account as of the date of the hearing (July 15, 1999), less any credits or payments to the Complainant's account is due and payable to the Company.

V. ORDER

Accordingly, after due notice, hearing and consideration, it is

Untitled

ORDERED: That George Fichera shall pay to the Colonial Gas Company the sum of \$1,306.58, which includes the disputed amount from the informal hearing of \$917.75 on the Complainant's account as of the date of the hearing (July 15, 1999), less any credits or payments to the Complainant's account. This balance may be paid in a lump sum within thirty days of the issuance of this Order, or over a period of 14 months at a rate of \$100 per month with a final payment of \$6.58, in addition to any current charges rendered, with the first payment due within thirty days of the issuance of this Order.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Untitled

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. CCF is an acronym abbreviation for units of one hundred cubic feet.
2. Average temperature for the month as listed by the Company on its monthly bills.
3. The Department notes that a record discrepancy exists between Company Exhibit C-6 which appears to show a meter removal date of April 11, 1998 and Company Exhibit C-7 which indicates a meter test date of April 10, 1998.
4. On June 23, 2000 the Department sent notice of Proposed Amendment of Record to both parties in this proceeding to include the referenced letter as Exhibit DTE-1. Neither party filed objection to the inclusion of that letter by the July 7, 2000 response date and the record was accordingly amended to include that document. The Department further notes that the Department's reference to Complainant's meter as D790653 in Exhibit DTE-1 is a reference to the Manufacturer's Number and is the same as the Company's reference to Complainant's meter as #97466 in Exhibit C-7, which is a reference to the Company Number (see Exh. C-7, at 2, line 17).
5. R-value is the generally accepted industry reference for level insulation value.